

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Arcadia, Louisiana and)
Wake Village, Texas)

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MM Docket No. 99-144
RM-9538

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NOTICE OF PROPOSED RULE MAKING

Adopted: April 28, 1999

Released: May 7, 1999

Comment Date: June 28, 1999

Reply Date: July 13, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed on behalf of Houston Christian Broadcasters, Inc. ("HCBI"), permittee of Station KBHA, Channel 223A, Wake Village, Texas, requesting the substitution of Channel 223C3 for Channel 223A at Wake Village, Texas, and modification of its construction permit for Station KBHA to specify operation on Channel 223C3. To accommodate the upgraded allotment at Wake Village, HCBI also requests the substitution of Channel 231C3 for Channel 223A at Arcadia, Louisiana, and modification of the construction permit for Channel 223A to specify operation on Channel 231C3.¹ According to HCBI, the substitution at Wake Village will increase the potential coverage area by 90 percent while increasing the population served by 18 percent. HCBI has stated its intent to file an application to upgrade the station at Wake Village.

2. In recognition of the Commission's policy concerning the involuntary relocation of an authorized transmitter, HCBI provided a copy of an agreement with Charles and Pattie Odom, ("Odoms") permittees of Channel 223A at Arcadia, consenting to a change in the authorized transmitter site, as well as the proposed channel of operation, to accommodate the modification for Station KBHA. HCBI has stated its willingness to reimburse the Odoms for the reasonable

¹ HCBI submitted an agreement from Charles and Pattie Odom, permittees of Channel 223A at Arcadia, consenting to the substitution at Arcadia. Since the Odoms have consented to the modification, issuance of an Order to Show Cause is not necessary.

expenses involved in changing the site and channel for the Arcadia facility in accordance with Commission policy. See Circleville and Columbus, Ohio, 8 FCC 2 159 (1967).

3. We believe the proposal warrants consideration since the substitutions at Arcadia and Wake Village could provide expanded service to both communities. A staff engineering analysis has determined that Channel 223C3 can be allotted to Wake Village, Texas, in compliance with the Commission's spacing requirements at HCBI's specified site.² As requested, we shall propose to modify the construction permit for Station KBHA, Wake Village, to specify operation on Channel 223C3. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 223C3 at Wake Village or to require HCBI to demonstrate the availability of additional equivalent class channels for use by such parties. Channel 231C3 can be substituted for Channel 223A at Arcadia, Louisiana, in compliance with the minimum distance separation requirements of the Commission's Rules at a site 11.8 kilometers (7.3 miles) south of the community.³ As requested, we shall propose to modify the construction permit for Channel 223A at Arcadia to specify operation on Channel 231C3. However, in accordance with Section 1.420(g) of the Commission's Rules, should another party indicate an interest in the Class C3 allotment, the modification at Arcadia cannot be implemented unless an equivalent class channel is also allotted.⁴

4. In view of the fact that the above proposal could provide expanded service to Wake Village and Arcadia, the Commission believes it would serve the public interest to solicit comments on the proposal to substitute Channel 223C3 for Channel 223A at Wake Village, Texas, and the substitution of Channel 231C3 for Channel 223A at Arcadia, Louisiana. Therefore, we will seek comments on the proposed amendments to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

Community	Channel No.	
	Present	Proposed
Arcadia, Louisiana	223A	231C3

² The coordinates for Channel 223C3 at Wake Village are 33-20-00 and 93-58-00. Although Station KHBA is short spaced to Station KTKC, Channel 224A, Springhill, Louisiana, Station KTKC was modified in a one-step application to specify operation on Channel 225C2 at a site that is fully spaced to the proposed substitution at Wake Village (BMPH-970717IC). The FM Table of Allotments has been amended to reflect the channel change at Springhill.

³ The coordinates for Channel 231C3 at Arcadia are 32-26-45 and 92-56-49.

⁴ Section 1.420(g)(2) of the Commission's Rules permits the modification of a station's authorization to a non-adjacent, higher powered channel if an additional equivalent class of channel is available for use by other parties which submit competing expressions of interest. In this regard, we note that HCBI did not provide an alternate channel for other parties in its petition for rule making.

Wake Village, Texas

223A⁵

223C3

5. Although an Order to Show Cause to Charles and Pattie Odom for the proposed substitution at Arcadia, Louisiana, is not required in view of their consent to HCBI's modification request, we will serve the Odoms with a copy of this Notice.

Charles and Pattie Odom
1004 Elm Street
Minden, Louisiana 71055

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **June 28, 1999**, and reply comments on or before **July 13, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioners' counsel, as follows:

Jeffrey D. Southmayd
Southmayd & Miller
1220 19th Street, N.W., Suite 400
Washington, D. C. 20036

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary

⁵ Section 73.202(b) of the Commission's Rules shows the allotment of Channel 233A at Wake Village. We take this opportunity to correct the FM Table of Allotments to show Channel 223A in lieu of Channel 233A.

of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.